BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

HENRY N. CASTANEDA	)	
Claimant	)	
	)	
VS.	)	
	)	
CROSS MFG., INC.	)	
Respondent	)	Docket No. 213,035
	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant requests review of the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on June 11, 1996.

ISSUES

The Administrative Law Judge denied compensation finding claimant's injury to be attributable to a personal condition and that no other factor nor hazard of employment intervened to cause or contribute to the injury. On appeal, claimant raises the issue of whether his injuries arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the transcript of the preliminary hearing proceedings held June 11, 1996, together with the exhibits attached thereto, and the briefs of the parties, the Appeals Board finds, for purposes of preliminary hearing, that the Order of the Administrative Law Judge should be affirmed.

Claimant is a sixty-year old man who has been employed by respondent for over thirty-one years. On the morning of March 18, 1996, he was making his rounds checking with people when, following a conversation with a coworker, claimant turned around,

blacked out, and fell to the concrete floor. The fall resulted in a fracture of his right arm and a laceration to his forehead which required six stitches. Claimant denied having experienced a blackout like this before. His health history includes the use of a heart pacemaker and a diagnosis of diabetes mellitus. Although claimant had experienced incidents of dizzy spells prior to the diabetes diagnosis and prior to installation of the pacemaker, he reported no feelings of dizziness, queasiness, or nausea immediately prior to the March 18, 1996, injury at work. To date there has not been any diagnosis made or medical explanation given for claimant's blackout.

The Administrative Law Judge found claimant's accident and injury not to have arisen out of and in the course of his employment because the blackout was attributable to a personal condition of the employee and no other factor intervened to cause or contribute to the injury. The Appeals Board agrees. An injury must arise out of and occur in the course of a worker's employment to be compensable under the Workers Compensation Act. K.S.A. 44-501(a). Respondent does not dispute that injury occurred in the course of his employment. However, respondent denies that the accidental injury arose "out of" claimant's employment.

> "An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment." Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).
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> In 1993 the following language was added to K.S.A. 44-508(e):
>
> "An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living."

Furthermore, it has long been the rule that risks that are personal to the worker are not compensable. Bennett v. Wichita Fence Co., 16 Kan. App. 2d 458, 824 P.2d 1001, rev. denied 250 Kan. 804 (1992); Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979).

Claimant's counsel concedes that no explanation has been offered by any of the physicians who have treated claimant as to why he may have passed out. Nevertheless, it is claimant's position that his claim is compensable due to the "hazard" at respondent's employment whereby claimant is required to work around large metal machines and on a concrete floor. It is asserted that claimant would not have sustained the laceration on his head nor the broken arm had he not fallen onto a metal machine and a concrete floor. We find these conditions insufficient to rise to the level of an employment hazard. Furthermore, the record does not establish that claimant fell onto or against a machine. Claimant was the only witness to testify at the preliminary hearing. He described what happened as follows:

> "I come to work at six o'clock, punched in, made my rounds checking with the people, and was there with this Bob Meckfessel, telling him what we was going to do, and I turned around, and the switch went out. The next thing I remember, I was on the floor." (Preliminary Hearing Transcript, p. 5)

Claimant concedes that he does not know of anything with regard to his job that caused him to blackout and fall. He denies tripping over anything. It is his understanding that there was not anyone who actually saw him fall. Claimant's counsel's speculation concerning claimant having struck his head on machinery is just that, speculation. The Appeals Board does not find the fact that claimant was working on a concrete surface alone to constitute a hazard of employment. This case is thereby distinguishable from a claimant's automobile crashing into a tree during an epileptic seizure as in Bennett or falling into an open pit on the job site as in Baggett v. B & G Construction, 21 Kan. App. 2d 347, 900 P.2d 857 (1995).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the June 11, 1996, Order of Administrative Law Judge Jon L. Frobish should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this _____ day of August 1996.

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BOARD MEMBER

c: David H. Farris, Wichita, KS
Jerry M. Ward, Great Bend, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director